

Summons in a Civil Action (Rev 11/97)

# United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

CHIQUITA FRESH, N.A., L.L.C.  
250 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 784-8000

VS

SAMMY'S PRODUCE, INC.  
1635 Rosencrans Street, Suite D  
San Diego, California 92106  
(760) 631-4250

and

SEE ATTACHED

## SUMMONS IN A CIVIL ACTION

Case No. 08-CV714 JLS(POR)

TO: (Name and Address of Defendant)

Samuel V. Nucci  
1635 Rosencrans Street, Suite D  
San Diego, CA 92106

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY

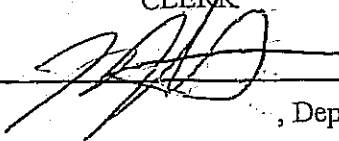
KIRBY & McGUINN  
600 B. Street, Suite 1950  
San Diego, California 92101-4515  
619-685-4000

An answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK

By



, Deputy Clerk

APR 18 2008

DATE

Summons in a Civil Action

Page 1 of 2

**ORIGINAL**

RETURN OF SERVICE				
Service of the Summons and Complaint was made by me			DATE	
NAME OF SERVER			TITLE	
Check one box below to indicate appropriate method of service				
<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 40%;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: _____ </div> <div style="width: 60%;"></div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"> <div style="width: 40%;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein: </div> <div style="width: 60%;"></div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"> <div style="width: 40%;"> <input type="checkbox"/> Return unexecuted: </div> <div style="width: 60%;"></div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"> <div style="width: 40%;"> <input type="checkbox"/> Other (specify): </div> <div style="width: 60%;"></div> </div>				
STATEMENT OF SERVICE FEES				
TRAVEL		SERVICES	TOTAL \$0.00	
DECLARATION OF SERVER				
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.</p>				
<div style="display: flex; justify-content: space-between;"> <div style="width: 40%;">Executed on:</div> <div style="width: 60%;"></div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 40%;">Date</div> <div style="width: 60%;">Signature of Server</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 40%;"></div> <div style="width: 60%;">Address of Server</div> </div>				
NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE				
<p>IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. <u>COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.</u></p> <p>YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.</p> <p>JUDGEMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.</p>				

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

ATTACHMENT TO SUMMONS  
CASE NO. 08CV714 JLS(POR)

YAN SKWARA  
1635 Rosencrans Street, Suite D  
San Diego, California 92106  
(760) 631-4250

and

SAMUEL V. NUCCI  
1635 Rosencrans Street, Suite D  
San Diego, California 92106  
(760) 631-4250

and

DARIN PINES  
1635 Rosencrans Street, Suite D  
San Diego, California 92106  
(760) 631-4250

Case 08-cv-00714-JLS-POR Document 9 Filed 05/02/2008 Page 4 of 6

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): KIRBY & MCGUINN, APC DEAN T. KIRBY, JR., ESQ., 090114 600 "B" STREET, 1950 SAN DIEGO, CA 92101		TELEPHONE NO. (619) 685-4000	FOR COURT USE ONLY
ATTORNEY FOR (Name): Insert name of court, judicial district or branch court, if any: UNITED STATES DISTRICT COURT 880 FRONT STREET - SUITE 4290 SAN DIEGO, CA 92101		Ref. No. or File No. TINA/CHIQUITA	
PLAINTIFF: CHIQUITA			
DEFENDANT: SAMMY 'S			
PROOF OF SERVICE	DATE:	TIME:	DEPT/DIV: CASE NUMBER: 08 CV-714 JLS (POR)

UNITED STATES DISTRICT COURT  
DECLARATION OF SERVICE

I, THE UNDERSIGNED, DECLARE UNDER PENALTY OF PERJURY THAT I WAS ON THE DATE HEREIN REFERRED TO OVER THE AGE OF 18 YEARS AND NOT A PARTY TO THE WITHIN ENTITLED ACTION. I SERVED THE:

SUMMONS; COMPLAINT; CIVIL COVER SHEET; CERTIFICATION OF INTERESTED PARTIES

ON: SAMUEL V. NUCCI

IN THE ABOVE MENTIONED ACTION BY DELIVERING TO AND LEAVING WITH THE ABOVE NAMED PERSON A COPY THEREOF, AT:

1635 ROSECRANS STREET, SUITE D  
SAN DIEGO, CA 92106

ON: April 29, 2008  
AT: 10:15 am

COPIES WERE LEFT AT THE DEFENDANT'S DWELLING HOUSE OR USUAL PLACE OF ABODE WITH A PERSON OF SUITABLE AGE AND DISCRETION. I THEREAFTER MAILED THE COPIES, ADDRESSED AS SHOWN ABOVE, BY FIRST CLASS MAIL, POSTAGE PREPAID, ON April 29, 2008 FROM SAN DIEGO, CA 92116.

NAME OF PERSON WITH WHOM THE DOCUMENTS WERE LEFT:  
SYLVIA SNYDER ~ PERSON IN CHARGE - OFFICE MANAGER

Manner of service in compliance with Federal Rules of Civil Procedure.

Fee for Service: \$42.50  
Registered California process server.  
County: SAN DIEGO  
Registration No.: 968  
Diversified Legal Services, Inc.  
4665 Park Blvd  
San Diego, CA 92116  
6192608224

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on April 30, 2008 at SAN DIEGO, California.

Signature:   
STEPHEN GEBERT 163942

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):

KIRBY &amp; MCGUINN, APC

TELEPHONE NO.  
(619) 685-4000

FOR COURT USE ONLY

DEAN T. KIRBY, JR., ESQ., 090114

600 "B" STREET, 1950

SAN DIEGO, CA 92101

Ref. No. or File No.

TINA/CHIQUITA

ATTORNEY FOR (Name):

Insert name of court, judicial district or branch court, if any:

UNITED STATES DISTRICT COURT

880 FRONT STREET - SUITE 4290

SAN DIEGO, CA 92101

PLAINTIFF:

CHIQUITA

DEFENDANT:

SAMMY 'S

DECLARATION OF DILIGENCE

DATE:

TIME:

DEPT/DIV:

CASE NUMBER:

08 CV-714 JLS (POR)

received the within process on April 22, 2008 and that after due and diligent effort I have been able to personally serve said witness. The following itemization of the dates and times of attempts details the efforts required to effect personal service. Additional costs for diligence are recoverable under CCP §1033.5 (a)(4)(B).

PARTY SERVED: SAMUEL V. NUCCI

1635 ROSECRANS STREET, SUITE D

SAN DIEGO, CA 92106

As enumerated below:

04/22/2008 02:35 pm

Not In.

04/25/2008 09:05 am

Not In.

04/29/2008 10:15 am

SUBSTITUTE SERVICE.

Fee for Service:

County: SAN DIEGO

Registration No.: 968

DIVERSIFIED LEGAL SERVICES

P.O. BOX 3969

SAN DIEGO, CA 92163

(800) 280-6591

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on April 30, 2008.

Signature: \_\_\_\_\_

STEPHEN GEBERT

DECLARATION OF DILIGENCE

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)</b> <b>DEAN T. KIRBY, JR., ESQ.</b> <b>KIRBY &amp; MCGUINN, APC</b> <b>600 "B" STREET 1950 SAN DIEGO, CA 92101</b>		<b>SBN: 090114</b>	<b>FOR COURT USE ONLY</b>
<b>TELEPHONE NO.: (619) 685-4000</b> <b>E-MAIL ADDRESS (Optional):</b> <b>ATTORNEY FOR (Name):</b>		<b>FAX NO.: (619) 685-4004</b>	
<b>UNITED STATES DISTRICT COURT</b>  <b>STREET ADDRESS: 880 FRONT STREET - SUITE 4290</b>  <b>MAILING ADDRESS:</b>  <b>CITY AND ZIP CODE: SAN DIEGO, CA 92101</b>  <b>BRANCH NAME: SOUTHERN DISTRICT</b>			
<b>PLAINTIFF/PETITIONER: CHIQUITA</b>  <b>DEFENDANT/RESPONDENT: SAMMY'S</b>			
<b>PROOF OF SERVICE BY MAIL</b>			<b>CASE NUMBER:</b> <b>08 CV-714 JLS(POR)</b>

I am a citizen of the United States and employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 4665 PARK BLVD, SAN DIEGO, CA 92116.

On April 29, 2008, after substituted service under section CCP 415.20(a) or 415.20(b) or FRCIV.P 4(d)(1) was made, I mailed copies of the:

**SUMMONS; COMPLAINT; CIVIL COVER SHEET; CERTIFICATION OF INTERESTED PARTIES**

to the defendant in said action by placing a true copy thereof enclosed in a sealed envelope, with First Class postage thereon fully prepaid, in the United States Mail at SAN DIEGO, CA 92116, California, addressed as follows:

**SAMUEL V. NUCCI**  
**1635 ROSECRANS STREET SUITE D**  
**SAN DIEGO, CA 92106**

I am readily familiar with the firm's practice for collection and processing of documents for mailing. Under that practice, it would be deposited within the United States Postal Service, on that same day, with postage thereon fully prepaid at SAN DIEGO, CA 92116, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

Fee for Service: 42.50



County: San Diego  
Registration No.: 968  
DIVERSIFIED LEGAL SERVICES, INC  
4665 PARK BLVD  
SAN DIEGO, CA 92116  
(619) 260-8224

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on April 30, 2008.

Signature: \_\_\_\_\_  
KEVIN GILBERT

### PROOF OF SERVICE BY MAIL

Order#: 163942/GProof5